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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 822

DE MET'S INCORPORATED,
Plaintiff-Petitioner,

AND

ROBERT E. WOOD,
Intervenor-Petitioner,

vs.

SAMUEL INSULL, JR., C. W. SILLS, H. L. STUART, STANLEY FIELD, EDWARD J. DOYLE, F. K. SHRADER AND JOHN H. GULICK,
Defendants-Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

EDMUND D. ADCOCK,
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THE GUNTHORP-WARREN PRINTING COMPANY, 150 WEST JACKSON, CHICAGO

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Statement of the Matters Involved.

Simultaneously with the filing of this petition, there is being filed in this Court a petition for certiorari by the plaintiffs in the case of Thomas D. Aiken, *et al. vs.* Samuel Insull, *et al.*, designated as Case No. 7430 in the Circuit Court of Appeals for the Seventh Circuit. The case at bar was designated as Case No. 7431 in that court and the two cases were there heard jointly, the facts and legal questions being similar and related.

In No. 7431, the case at bar, the Circuit Court of Appeals filed an opinion on August 22, 1941 (R. 344) in which it adopted its opinion in No. 7430 (R. 347) as to the questions here involved. The opinion is reported in 122 F. (2d) 755. Likewise the two cases were heard together in the District Court and a joint Memoranda of Holdings was filed by the District Court on January 31, 1940 (R. 292). The two cases are similar and closely related in that both are suits against directors of related corporations, charging the same type of wrongful acts, the Aiken case being a suit against the directors of Insull Utility Investments, Inc., by the holders of debentures of that corporation, and the case at bar being a suit against the directors of Corporation Securities Company, by the holders of Serial Gold Notes of that company, which notes contained covenants against pledging of assets in substantially the same language as in the I.U.I. debentures. Some of the respondents here (Stuart and Insull, Jr.) were also directors of I.U.I. and are respondents in the Aiken case.

The complaint in this case makes substantially the same allegations as in the complaint involved in the Aiken case, except for differences as to names, dates and amounts.

Corporation Securities Company of Chicago was organized by Samuel Insull and the other defendants herein about October 5, 1929 as an investment company (R. 3). Its purposes were stated in public reports and circulars to be the same as those of I.U.I., which was referred to therein (R. 61), that is, to acquire and hold a substantial amount of securities of the companies in the Insull Group (R. 3-5). These reports and circulars are the same as those referred to in case No. 7430.

In September 1930 Corporation Securities Company of Chicago issued and sold to the public $31,500,000 par amount of Serial Gold Notes, of which there were outstanding in the hands of the public at the time of filing this

suit $23,233,000 (R. 6). The number of the holders of said notes is approximately 5,000 (R. 243).

These Serial Gold Notes were purchased by such holders in reliance upon the circulars (R. 67) issued by the defendants representing the purpose of the company, the relationship of the defendants to the companies in the Insull Group, the protection to Noteholders by reason of the covenant and the representation that the proceeds of financing would furnish sufficient funds to pay off all current indebtedness and acquire all securities contracted for and provide the company with a substantial cash sum, over $8,000,000 (R. 67-68).

The complaint charges that notwithstanding the covenants in the Serial Gold Notes, the defendants induced the corporation to make large loans from banks and to pledge substantially all of its assets as collateral therefor without securing the Serial Gold Notes equally and ratably with such loans and without securing them whatsoever (R. 10, 11).

On April 18, 1932, a petition in bankruptcy was filed against Corporation Securities Company and on September 22, 1932, it was adjudicated a bankrupt (R. 109). As of April 18, 1932, the loans from banks aggregated over $15,000,000 and the collateral pledged had a market value of about $12,000,000 and constituted about 99% of the total assets of the company (R. 8—Paragraph 15).

The motion of the defendants for summary judgment (R. 56) was based upon the same grounds as in the Aiken case. Similar class suits in behalf of the holders of Serial Gold Notes of Corporation Securities Company had been filed against the Chicago and New York banks, to whom the assets of the corporation had been pledged, charging that said banks had notice of the covenants in the Serial Gold Notes and praying for decrees whereby the holders of the Serial Gold Notes would share with the banks in said se-

curities equally and ratably as required by the covenants (R. 106-110). In defending those suits the banks contended, among other things, that they owed no duties or obligations to the Noteholders and that they had no notice of the provisions of the notes restricting pledging (R. 235).

None of the suits brought by the Noteholders of Corporation Securities Company against the banks was ever tried but after the decision of the Circuit Court of Appeals for the Second Circuit in the cases brought by the Debenture Holders of I.U.I. (*Kelly* v. *Central Hanover Bank & Trust Company, et al.*, 85 Fed. (2d) 61), the representatives of the Noteholders of Corporation Securities Company participated in the negotiations between the debenture holders of I.U.I. and the banks for the settlement of all litigation against the banks and the claims of both were included in that settlement (R. 125, 239-242).

Under the settlement the banks agreed to pay these noteholders $1,200,000 (R. 126), being 10% of the value of the pledged collateral on an agreed date (R. 241), with the same understanding and intention as stated in the Aiken case, that is, that said sum was partial payment only and that the cause of action herein against the directors of Corporation Securities Company should not be discharged or affected thereby (R. 239-241).

The settlement was presented to the court at the same time and in conjunction with the settlement involved in the Aiken case, at a joint hearing upon similar petition and notice to holders of notes and similar orders and decrees were entered, all of which expressly reserved the cause of action against the defendant directors (R. 242). The settlement in each case was contingent upon approval of the settlement in the other (R. 132).

In response to defendants' motions for summary judgment here, plaintiffs filed a verified answer substantially the same as in the Aiken case setting forth the facts in re-

spect to the intention of the settling parties and requested an opportunity to prove the same (R. 239-245); defendants filed a reply (R. 274), and by statements of counsel in open court (R. 271-274, 285-288) admitted all of said facts in order to dispense with further proof. On December 7, 1939, after preliminary hearings before Judge Wilkerson, he transferred the cause to the Executive Committee for reassignment and it was reassigned to Judge Charles G. Briggle (R. 276).

In order to avoid duplication we limit the Statement of the Matters involved as above set forth, respectfully referring the Court to the more detailed statement appearing in the petition for certiorari filed in the case of Aiken, *et al. vs.* Insull, *et al.*

Jurisdiction of This Court to Review the Decree in Question.

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229 (28 U. S. C. A. Sec. 347). The decree which the petitioner seeks to have reviewed was entered by the Court of Appeals of the Seventh Circuit on August 22, 1941 (R. 359). Petitions for rehearing were denied October 1, 1941 (R. 405).

The Questions Presented and the Reasons for the Allowance of the Writ.

The questions presented and the reasons for the allowance of the writ in this case are the same as those stated in the petition for certiorari filed simultaneously herewith in the case of Thomas D. Aiken, *et al.*, against Samuel Insull, *et al.*, which are hereby adopted (except Question No. 7 and Reason No. 6, the facts on which they are based not existing in the case at bar).

In view of the fact that the matters involved and questions presented in this case are substantially the same as those in the case of *Aiken* v. *Insull,* as explained above, and in order to avoid duplication, petitioners respectfully adopt as their supporting brief the brief filed in support of the Petition for Writ of Certiorari in the *Aiken* case by the plaintiffs therein.

WHEREFORE, your petitioner prays that the Writ of Certiorari be issued under the seal of this Court directed to the United States Circuit Court of Appeals, for the Seventh Circuit, commanding that Court to certify and send to this Court on a day to be designated, a full and complete transcript of the record and of all proceedings in the Circuit Court of Appeals had in this cause to the end that this cause, insofar as it involves the summary judgment barring the plaintiffs from maintaining the cause of action against directors for having induced the wrongful pledging of assets, may be reviewed and determined by this Court; that the judgment of the Circuit Court of Appeals affirming said summary judgment be reversed; and that the decree of the District Court insofar as it allows said summary judgment be set aside; and that your petitioners be granted such other and further relief as may be proper.

Respectfully submitted,

DE MET'S INC., AND
ROBERT E. WOOD,
By EDMUND D. ADCOCK,
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